UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



---

UNITED STATES OF AMERICA,

02 Cr. 395 (JGK)
OPINION AND ORDER

- against -

AHMED ABDEL SATTAR,
a/k/a "Abu Omar,"
a/k/a "Dr. Ahmed,"
YASSIR AL-SIRRI,
a/k/a "Abu Ammar,"
MOHAMMED YOUSRY and LYNNE STEWART,

Defendants.

---





JOHN G. KOELTL, District Judge:

On April 8, 2002, a Grand Jury sitting in the Southern District of New York returned a five-count indictment (the "Indictment") against the defendants Ahmed Abdel Sattar, a/k/a "Abu Omar," a/k/a "Dr. Ahmed", Yassir Al-Sirri, a/k/a "Abu Ammar," Lynne Stewart, a criminal defense attorney whose law offices are located in New York County, and Mohammed Yousry. Counts One charges all four defendants with conspiring to provide material support and resources to a designated foreign terrorist organization - namely, the Islamic Group ("IG") - in violation of 18 U.S.C. § 2339B. Count Two charges all four defendants with providing and attempting to provide such support in violation of 18 U.S.C. §§ 2339B and 2. Count Three charges Sattar and Al-

Sirri with soliciting crimes of violence in violation of 18 U.S.C. § 373. Count Four charges Sattar, Stewart and Yousry with conspiring to defraud the United States in violation of 18 U.S.C. § 371. Count Five charges Stewart with making false statements in violation of 18 U.S.C. §§ 1001 and 2.

There are currently several motions pending before the Court. On June 4, 2002, the defendant Sattar moved to compel the government to disclose whether his attorney-client communications at the Metropolitan Correctional Center ("M.C.C.") in New York, New York, where he is being held, were the target of any electronic surveillance, or to dismiss the Indictment if such disclosure was not made. In his reply brief, Sattar limited his motion to one for disclosure of whether he was being or would be subjected to any non-court-authorized surveillance pursuant to 28 C.F.R. § 501.3(d), without prior notification. Stewart and Yousry joined Sattar's motion. Stewart has also moved much more broadly to compel the government to disclose whether it is engaging in any surveillance of a number of locations that might involve attorney-client communications relating to any of the defendants or Stewart's clients, in particular pursuant to either (i) Title III of the Omnibus Crime Control and Safe Streets Act of 1968 ("Title III"), as amended, 18 U.S.C. §§ 2510-2521; (ii) the Foreign Intelligence Surveillance Act of 1978 ("FISA"), 50 U.S.C. § 1801 et seq.; or (iii) 28 C.F.R § 501.3(d). Finally,

Stewart moves for an evidentiary hearing into the circumstances surrounding the placement of one of the search warrant affidavits in this case in a public miscellaneous court file, rather than under seal. This document was later accessed by the media, and some of its contents were published.

I.

On April 9, 2002, the defendants Sattar, Stewart and Yousry were arrested on the charges stated in the Indictment and warrants were executed for a number of the premises used or inhabited by these defendants. At their arraignment on that same day, the government represented that its case against these defendants was based, in part, on evidence obtained pursuant to court-authorized electronic surveillance obtained pursuant to FISA. This evidence purportedly included intercepts from Sattar's telephones and certain attorney-client visits between the defendant Stewart and Sheikh Abdel Rahman in prison, which, according to the Indictment, were used to further some of the criminal activity alleged in the Indictment. See also Letter from the Government to the Defendants dated May 8, 2002 ("In accordance with the Foreign Intelligence Surveillance Act of 1978 (FISA), 50 U.S.C. § 1801 et seq., notice is hereby given that information obtained or derived pursuant to the authority of the FISA was used, and will continue to be used, in connection with the prosecution of the above-referenced case."). The government

has been producing these materials to the defendants as part of its discovery in this case.

On April 8, 2002, the government obtained search warrants and, at its request, the affidavits and warrants were placed under seal. On April 9, 2002, the government submitted two affidavits and amended warrants, and the amended warrants were signed. The affidavits and amended warrants were submitted and signed at different times. Although both affidavits were marked "TO BE FILED UNDER SEAL," one affidavit and one search warrant, which were the last to be filed, were not sealed. On April 12, 2002, the government obtained an additional warrant, and the application and warrant were also filed under seal.

On April 24, 2002, at a pre-trial conference, Sattar's counsel requested assurances from the government that conversations between Sattar and his counsel in the attorney-client conference rooms at the M.C.C. were not being subjected to any governmental monitoring. On April 25, 2002, the defendant Stewart similarly sent a letter to the government seeking disclosure whether there was any ongoing court-authorized monitoring under FISA, Title III, or any other provisions or on any extra-legal basis, of (1) the telephones in her law office; (2) the office telephone of Susan V. Tipograph, Esq., who was Stewart's attorney at the time, (3) the law offices located at 351 Broadway 3rd Floor, New York, New York, which include

Stewart's office and the offices of other criminal defense attorneys; and (4) any of Stewart's visits with any of her incarcerated clients, in either federal or state custody. See Letter from Susan V. Tipograph, Esq. to the Government dated April 25, 2002, attached as Ex. A to Stewart Memo Joining Sattar Motion. The government has responded to both defendants that it cannot provide any assurances that it is not engaging in any court-authorized surveillance of these kinds because to do so would disclose information concerning the status or existence of ongoing criminal investigations and/or foreign intelligence operations, if any, which would thereby undermine the investigations. The government has, however, assured the defendants that any surveillance in which it engages will be conducted only in accordance with the relevant procedural safeguards set forth in the governing statutes and regulations. See Letter from the Government to Susan V. Tipograph, Esq. dated May 2, 2002, attached as Ex. B to Stewart Memo Joining Sattar Motion; Letter from the Government to Kenneth A. Paul, Esq. dated April 24, 2002, attached as Ex. A to Sattar Motion. In the April 24 letter, the government also assured Sattar that he was not currently subject to any Special Administrative Measures ("SAM's") and that his communications with his counsel were not being monitored pursuant to 28 C.F.R. § 501.3(c) or (d). See Letter from the Government to Kenneth A. Paul, Esq. dated

April 24, 2002.

On April 30, 2002, the government requested authorization to produce to defense counsel copies of various sealed documents, including the search warrant affidavits filed on April 9, 2002, but requested that the original search warrants and supporting affidavits remain under seal. The Court granted the government's request on May 2, 2002.

On May 31, 2002, a reporter from "Court T.V." requisitioned a number of documents from this case from the miscellaneous public court file. One of the documents was an affidavit that had been used in support of one of the warrants issued on April 9, 2002. See generally Letter from the Government to the Court dated June 3, 2002 ("Warrant Affidavit Letter"), attached as Ex. A to Stewart Motion; see also Receipt of Document Requisition dated May 31, 2002, attached as Ex. B to Gov's Opp. to Stewart Motion. Although the document was marked "TO BE FILED UNDER SEAL," it had apparently been in the public miscellaneous court file since April 9, 2002. See Criminal Docket Sheet, attached as Ex. A to Gov's Opp. to Motion for Hearing. On June 3, 2002, another reporter checked out the same document and informed the government that he intended to publish excerpts from the affidavit. See Receipt of Document Requisition dated June 3, 2002, attached as Ex. B to Gov's Opp. to Stewart Motion; Warrant Affidavit Letter at 2. The government sent a

letter to the Court on that day indicating that it had received this communication and that it had taken steps to ensure that the document was removed from the public file and placed under seal. See Warrant Affidavit Letter. Access to the document nevertheless resulted in press accounts of its contents.

The defendants subsequently filed the currently pending motions.

II.

As limited in his reply brief, the defendant Sattar moved to compel the government to provide assurances that it was not monitoring any of his attorney-client communications at the M.C.C. without court authorization, and without prior notification, pursuant to 28 C.F.R. § 501.3(d). This regulation allows the Attorney General, in certain specified circumstances, to impose special administrative measures designed to monitor the attorney-client communications of an inmate as a condition of his incarceration "based on information from the head of a federal law enforcement or intelligence agency that reasonable suspicion exists to believe that a particular inmate may use communications with attorneys or their agents to further or facilitate acts of terrorism . . . ." Id.; see also id. (allowing such monitoring "for the purpose of deterring future acts that could result in death or serious bodily injury to persons, or substantial damage to property that would entail the risk of death or serious bodily

injury to persons"). Sattar originally argued that without some assurance that he would obtain prior notification of any such surveillance, he could not effectively communicate with his counsel due to fear that the government might intercept privileged communications and use them against him in these proceedings without any prior court finding of probable cause that his attorney-client communications were being used to further ongoing terrorist or criminal activity.

However, 28 C.F.R. § 501.3(d)(2) explicitly states that "[e]xcept in the case of prior court authorization, the Director, Bureau of Prisons, shall provide written notice to the inmate and to the attorneys involved, *prior to the initiation* of any monitoring or review under this paragraph (d)." Id. (emphasis added). At oral argument, the government indicated that it agrees that this provision requires prior notification to Sattar and his counsel for any non-court-authorized monitoring to take place. The government also repeated its representation to Sattar and his counsel that their communications were not presently being monitored under § 501.3 and that the government would provide Sattar and his counsel with prior notification if the Attorney General were to direct any such monitoring pursuant to these regulations, unless a court authorized the government to withhold such notice. See Tr. dated 7/19/02 at 15-16. The government had made an almost identical representation to Sattar

by letter dated April 24, 2002, although Sattar argued that the letter was unclear about the timing of any such notice. See Letter from the Government to Kenneth A. Paul, Esq. dated April 24, 2002.

At oral argument, Sattar's counsel indicated that these assurances were adequate to satisfy the concerns raised in Sattar's motion relating to his effective assistance of counsel. Sattar therefore withdrew his motion on the basis of the government's representations. See Tr. dated 7/19/02 at 20-21.

Yousry had joined Sattar's motion on the basis that because the government's "refusal to assure Mr. Sattar that his attorney client conversations are not being monitored makes it impossible for the defendants to meet and discuss joint strategies or to enter into a joint defense agreement," "[t]his inability to confer with his co-defendant deprives Mr. Yousry of the ability to effectively defend himself." See Letter from David Stern to the Court dated June 14, 2002. Stewart's motion is also based in part on Sattar's previously stated inability to communicate with counsel. To the extent the motions by Yousry or Stewart were premised on Sattar's ability to communicate with his counsel, the motions are denied as moot in light of Sattar's representation that his concerns have been met.

III.

The defendant Stewart moves to compel the government to

disclose whether the government is engaging in any court-authorized electronic surveillance or monitoring of her communications with her counsel or with her clients, pursuant to either Title III or FISA.[1] She argues that any interception of attorney-client communications cannot be justified. She also argues that without such a disclosure, her communications with counsel have been sufficiently strained to deprive her of the effective assistance of counsel due to the fear that the government might intercept privileged communications and use them against her in these proceedings. To the extent that the other defendants lack similar assurances in this case, Stewart argues that her ability to enter into a joint defense agreement with the other defendants in this case has been hampered, which, she argues, undermines her ability to obtain effective representation in this case. Sattar and Youssry join Stewart's motion, seeking analogous disclosures.

Both Title III and FISA explicitly allow for court-authorized electronic surveillance without prior disclosure to the persons or entities who are the targets of the surveillance when such monitoring is necessary to obtain evidence relevant to

---

[1] Stewart argued that the government might also engage in monitoring pursuant to 28 C.F.R. § 501.3(d)(2) or without any legal authority. However, the government has already provided the defendants with assurances that any surveillance it engages in will be pursuant to the relevant governing statutory or regulatory provisions, and 28 C.F.R. § 501.3(d) relates only to Sattar.

ongoing criminal investigations or foreign intelligence information,[2] respectively, when normal investigative procedures have failed or are likely to fail or be overly dangerous, and when a number of other requirements have been met. See 18 U.S.C. §§ 2518(1), (3), (8)(b) & (d); 50 U.S.C. §§ 1804(a)(7)(A)-(C), 1805(a), (b), 1806. As the government has correctly argued, these Acts allow for surveillance without prior notification precisely because such monitoring can often only be effective if the targets are unaware that they are being monitored. Cf. Weatherford v. Bursey, 429 U.S. 545, 557 (1977) ("Our cases . . . have recognized the unfortunate necessity of undercover work and the value it often is to effective law enforcement."); ACLU Found. v. Barr, 952 F.2d 457, 461 (D.C. Cir. 1991) ("FISA thus created a 'secure framework by which the Executive Branch may conduct legitimate electronic surveillance for foreign intelligence purposes within the context of this Nation's

---

[2] FISA defines "foreign intelligence information" as: "(1) information that relates to, and if concerning a United States person is necessary to, the ability of the United States to protect against—(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power; (B) sabotage or international terrorism by a foreign power or an agent of a foreign power; or (C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or (2) information with respect to a foreign power or foreign territory that relates to, and if concerning a United States person is necessary to—(A) the national defense or security of the United States; or (B) the conduct of the foreign affairs of the United States." 50 U.S.C. § 1801(e).

commitment to privacy and individual rights.'") (citation omitted).

At the same time, both Acts set forth detailed requirements that must be met before any such covert surveillance can take place. Under Title III, a court must find, among other things, that there is probable cause to believe that the statutory requirements for such surveillance have been satisfied, including that particular communications concerning particular offenses will be obtained through such interception. See 18 U.S.C. § 2518(3). A criminal defendant's communications with the defendant's attorney are not privileged if used to further criminal activity, even if the attorney is unaware that advice is being sought in furtherance of such an improper purpose. See, e.g., United States v. Zolin, 491 U.S. 554, 562-63 (1989) ("The attorney-client privilege must necessarily protect the confidences of wrongdoers, but the reason for that protection - the centrality of open client and attorney communication to the proper functioning of our adversary system of justice - ceases to operate at a certain point, namely, where the desired advice refers *not to prior wrongdoing*, but to *future wrongdoing*.") (internal quotation marks and alteration marks omitted); In re Grand Jury Subpoena Duces Tecum dated September 15, 1983, 731 F.2d 1032, 1038 (2d Cir. 1984) (collecting cases).

Similarly, under FISA, a judge of a special FISA court

comprised of Article III judges designated by the Chief Justice of the United States must find, among other things, that there is probable cause to believe that the target of the electronic surveillance is a foreign power or an agent of a foreign power and that each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power, "[p]rovided . . . [t]hat no United States person may be considered a foreign power or an agent of a foreign power solely upon the basis of activities protected by the first amendment of the Constitution of the United States"; the application must also contain a certification by a designated national security official that a significant purpose of the surveillance is to obtain foreign intelligence information; and the application must be approved by the Attorney General. See 50 U.S.C. §§ 1803, 1804(a)(7), 1805(a)(3)(A)-(B), (a)(5).

Both Acts require that certain minimization procedures be followed to help protect any genuine privacy or confidentiality concerns that may arise during such surveillance. See, e.g., 18 U.S.C. § 2518(5), (8)-(10); 50 U.S.C. §§ 1801(h), 1805(a)(4), (c)(2). To the extent that any such communications have been recorded, the Acts provide mechanisms through which individuals can prevent the communications from being used against them in criminal and other proceedings. Individuals must

be given notice under both Acts if the government intends to use the fruits of any such surveillance against a person in a criminal proceeding, and the criminal defendant may then move to suppress the evidence. See 18 U.S.C. § 2518(9)-(10); 50 U.S.C. § 1806(a) ("No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character."); 50 U.S.C. § 1806(c) & (e); see also generally United States v. Belfield, 692 F.2d 141, 144-46 (D.C. Cir. 1982).

Both statutes provide detailed provisions for notice and the opportunity to challenge surveillance after it occurs and before it is used against a defendant. They do not provide for advance notice, however, which would undermine the efficacy of the statutes. See, e.g., ACLU Found., 952 F.2d at 468 n.13 ("The government makes the point with which we agree that under FISA it has no duty to reveal ongoing foreign intelligence surveillance.").[3]

While Stewart argues that the possible existence of

---

[3] To the extent that Stewart's motion is based on the contention that privileged materials might be intercepted by the government if she were to communicate with Sattar as part of a joint defense agreement, and if Sattar's communications were monitored pursuant to 28 C.F.R. § 501.3, Sattar has withdrawn his own concerns relating to this regulation and the regulation provides for advance notice except in the case of prior court authorization and contains specific provisions for the protection of attorney-client communications. See 28 C.F.R. §§ 501.3(d)(2)-(3), (e).

surveillance interferes with her Sixth Amendment right to the effective assistance of counsel, Stewart cites no authority for the proposition that a bare fear of surveillance, without more, is sufficient to establish a constitutional requirement that the government disclose whether it is engaging in any court-authorized surveillance of a criminal defendant under Title III or FISA. In United States v. Defede, No. 98 Cr. 373, slip op. at 1 (S.D.N.Y. Sep. 22, 1998), the court summarily rejected an identical request for disclosure of any ongoing surveillance, stating that "[t]here is no basis for ordering disclosure of any undisclosed evidence of electronic surveillance or continuing electronic surveillance of this defendant, his law office, or the garment center in general." In that case, one of the defendants, who was an attorney, had argued that "[d]ue to the publicity in this case, I am advised that clients of the law firm are reluctant to talk with their attorneys because they believe that there is no longer any attorney-client privilege protection." Letter from Michael Rosen, Esq. to the Government dated June 30, 1998, attached as Ex. A to Gov.'s Opp.

Similarly, in the context of alleged attorney-client communications in deportation proceedings, the Court of Appeals for the District of Columbia Circuit refused to recognize a claim for relief:

> [P]laintiffs say they have made out a claim under the due process clause of the Fifth Amendment. We think

> not. Aliens like others are entitled to due process but the government's overhearing of attorney-client conversations relating to the deportation proceedings does not *in itself* violate the Fifth Amendment any more than the government's overhearing of attorney-client conversations relating to the defense of a criminal prosecution *in itself* violates the Sixth and Fourteenth Amendments.

ACLU Found., 952 F.2d at 472.

Where the intrusion upon an attorney-client communication is unintentional or justified there can be no violation of the Sixth Amendment without a showing that the intercepted communication was somehow used against the defendant to the defendant's prejudice. Weatherford, 429 U.S. at 554-59; United States v. Schwimmer, 924 F.2d 443, 444-47 (2d Cir. 1991); United States v. Ginsberg, 758 F.2d 823, 832-34 (2d Cir. 1985); United States v. Gartner, 518 F.2d 633, 637-38 (2d Cir. 1975). Under the statutes there are protections to minimize intrusions, and, in addition, the government has represented in this case that, if any privileged communications were intercepted, screening devices would be used to ensure that the interceptions were not used against the defendants and, thus, that their Sixth Amendment rights would not be violated. Stewart has not established that there are any legitimate grounds to fear that her privileged communications, or any of her co-defendants' privileged communications, will be used against them in these or any other proceedings.

Accordingly, to the extent that Stewart argues that she

is nevertheless chilled in her ability to consult with her attorneys, that belief is not a reasonable one and does not present a valid claim that her right to the effective assistance of counsel is being violated. Cf., e.g., United States v. John Doe # 1, 272 F.3d 116, 123 (2d Cir. 2001) (finding no abuse of discretion in failure to substitute new counsel where distrust of current counsel allegedly prevented an adequate defense but the defendant's distrust was unreasonable and was the unjustiable cause of any breakdown in communication); United States v. Roston, 986 F.2d 1287, 1292-93 (9th Cir. 1993) (same); Thomas v. Wainwright, 767 F.2d 738, 740-43 (11th Cir. 1985) (no constitutionally ineffective assistance of counsel where defendant unreasonably refused to communicate with his attorney).

Stewart argues that this motion is governed by this Court's prior Opinion and Order in United States v. Stewart, No. 02 Cr. 395, 2002 WL 1300059 (S.D.N.Y. Jun. 11, 2002), in which the Court appointed a Special Master to perform an initial review of a number of the materials obtained pursuant to a search warrant of Stewart's law offices for privilege and responsiveness to the warrant. See id. at *10. However, none of the exceptional circumstances that warranted appointment of a Special Master in those circumstances - including the showing of a strong likelihood that privileged materials relating to criminal defendants who had no relation to this case had already been

seized, that the government's proposed procedures for review may not have adequately provided protections for those unrelated defendants' Sixth Amendment rights, that all of the government's asserted legitimate interests could have been met by using a Special Master and that an extensive amount of materials had already been seized - are present in the current circumstances. See id. at *4, *7-9. The defendants have not explained, for example, how the government's legitimate interest in engaging in covert investigations of ongoing criminal activity or for foreign intelligence purposes could be maintained if the government were required to disclose any such investigations in advance, or why there is any likelihood of prejudice to the defendants' Sixth Amendment rights in this case because of the possibility of court-authorized FISA or Title III surveillance in accordance with the relevant statutory procedures and subsequent screening procedures.

For the foregoing reasons, the motion to compel disclosure of any ongoing surveillance pursuant to Title III or FISA is denied.

IV.

Stewart moves for an evidentiary hearing to determine how a search warrant affidavit filed on April 9, 2002 ended up in the public court records rather than under seal. Stewart argues that she has been prejudiced in her ability to obtain a fair

trial by the disclosures in the affidavit because the media has published some of these materials and because she cannot respond to their purported content without disclosing other materials that are under seal. Stewart contends that she is therefore entitled to an evidentiary hearing to establish that the affidavit was placed in the public files due to deliberate government misconduct, and for any appropriate relief upon such a finding.

The record clearly establishes that the government marked the disputed document "TO BE FILED UNDER SEAL." It was the government that initially marked the document to be filed under seal, and the affidavit at issue was filed on April 9, 2002, on the same day that other documents were in fact placed under seal. The government had previously filed warrants and affidavits under seal on April 8, 2002, and the government submitted a subsequent warrant and affidavit related to this case on April 12, 2002, which were also filed under seal. The government sought and obtained authorization from this Court on April 30, 2002 to disclose the search warrant affidavits and warrants in this case for the limited purpose of questioning witnesses, making discovery, use in pre-trial preparation and proceedings and use during the trial. The government requested that the original search warrants and affidavits remain under

seal, and the Court granted that request. There is no basis in the record or in the papers before the Court to conclude that the government intended to disclose any of the sealed materials in this case, and, in fact, the record indicates that the government has consistently maintained an interest in preserving all of these materials under seal. Cf., e.g., In re Searches of Semtex Indus. Corp., 876 F. Supp. 426, 429 (E.D.N.Y. 1995).

Stewart argues that there is sufficient evidence to warrant a hearing into possible governmental misconduct because the criminal docket sheet relating to the warrant to which the disputed affidavit was attached indicates: "Search Warrant (Not Filed Under Seal) as per [the Assistant U.S. Attorney's] instructions." The Assistant U.S. Attorney named in the docket sheet has, however, submitted an affidavit explaining in detail the filing of the numerous affidavits under seal, his mistaken understanding that the disputed affidavit had been filed under seal, his unequivocal denial that he engaged in any deliberate misconduct in the filing of the affidavit, and the fact that he never intended that the disputed affidavit not be filed under seal. An instruction not to file the affidavit under seal would have been inconsistent with the clear written statement on the front of the affidavit that it was to be filed under seal, and with the government's consistent conduct in this case and its

expressed desire to maintain confidentiality over the details of the investigations.

In her supplemental papers, Stewart shifted from a charge of misconduct against the specific prosecutor to an allegation that the prosecutor did not have personal knowledge of how the affidavit was disclosed and to a general charge of governmental misconduct. However, the specific prosecutor mentioned in the docket sheet has denied any effort to disclose the affidavit, and there is no showing that anyone else in the government attempted to disclose the affidavit. Stewart's contention that the government intentionally leaked this information to the media to prejudice her case just as she began to hold lawful public meetings regarding her case is undercut by the fact that the affidavit apparently sat in the public miscellaneous file for almost two months unnoticed by anyone before the media found the affidavit and published some of its contents. The government was also diligent in notifying the Court and the defendants about the fact that a reporter had discovered the document in the public court file, and was diligent in removing the document and placing it under seal once notified of the problem. In these circumstances, Stewart has made an insufficient showing that the affidavit was placed in the public file due to any misconduct by the government, as opposed

to a simple mistake or miscommunication, and an evidentiary hearing into this issue is unwarranted. See United States v. Myerson, No. 87 Cr. 796, 1988 WL 68143, at *11 (S.D.N.Y. Jun. 21, 1988) (denying motion for evidentiary hearing into alleged governmental misconduct in allegedly leaking grand jury materials to the media on the basis of government affidavit); In re Grand Jury Investigation (Lance), 610 F.2d 202, 214-16 (5th Cir. 1980) (collecting cases including cases from this Circuit in which requests for an evidentiary hearing into alleged governmental misconduct in allegedly leaking grand jury materials to the media were denied based on similar affidavits).

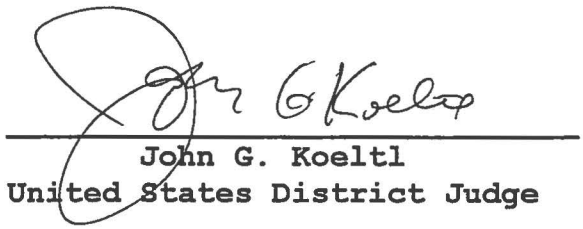
To the extent that Stewart argues that the disclosure to the media of some of the information in this case has prejudiced her ability to obtain a fair jury, the argument is not a basis for an evidentiary hearing. It will be many months before this case goes to trial, and the Court will conduct a thorough and extensive voire dire at that time to ensure that Stewart obtains a fair trial and is not prejudiced by any of the pre-trial publicity in this case.

**CONCLUSION**

For the foregoing reasons, the defendant Sattar's motion to compel disclosure of any non-court authorized electronic surveillance of his attorney-client meetings at the

M.C.C. has been withdrawn. The other defendants' motions to compel disclosure to Sattar are denied as moot. Stewart's motion to compel disclosure of any ongoing electronic surveillance on Sixth Amendment grounds is denied. Stewart's motion for an evidentiary hearing with respect to the disclosure of a search warrant affidavit is denied.

**SO ORDERED.**
**Dated: New York, New York**
**August 6, 2002**



**John G. Koeltl**
**United States District Judge**